IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2434 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT RANGE FOREST OFFICER, - Petitioner(s)

Versus

GANPATRAI RAJKARANJI BAROT - Respondent(s)

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Appearance :

MR KL PANDYA A.G.P. for Petitioner No(s).: 1.

MR DS VASAVADA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 27/06/2005

ORAL JUDGMENT

1. This petition is directed against the order dated 22nd July, 1999 passed by the Labour Court, Palanpur, in Reference [L.C.P.] No. 101 of 1996, whereby the Labour Court had directed the petitioner to reinstate the respondent workman on his original post considering his

service as continuous service with full back wages.

2. The short facts of the case are that the respondent workman was appointed purely on temporary basis. The service of the respondent workman was rendered at different places as per the grant available with the department. Since the respondent workman was working on temporary basis and that he did not joined the duty at Jalotra Nursery, his services were orally terminated.

2.1. On being orally terminated from the the service, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court while considering the case on merits, allowed the Reference with the aforesaid directions. Hence, this petition.

3. Mr. Pandya learned A.G.P. for the petitioner has submitted that the Labour Court has committed an error in granting reinstatement in service with full back wages in view of the fact that the respondent workman was originally appointed on daily wage basis and his services were rendered as and when the work was available with them. Mr. Pandya has further submitted that the respondent workman was required to join the duty at Jalothra Nursery, but he did not resume the duty at the said place and, therefore, it cannot be said that he has been terminated without following any procedure under the Industrial Disputes Act. Hence, the impugned order is required to be quashed and set aside.

4. Mr. Vasavada learned advocate for the respondent has submitted that in view of the decision of this Court rendered in Letter Patent Appeal No. 1528 of 2001, the order passed by the learned Single Judge in Special Civil Application No.3851 of 1993 was confirmed and the respondent was reinstated in service.

5. I have heard the learned advocates for the respective parties and have perused the materials placed on record. While admitting this petition, this Court had passed the following order :-

> "Heard learned A.G.P. Mr. Patel. RULE. Ad-Interim relief in terms of para 5(c) on condition that the petitioner shall reinstate the respondent workman in service within three weeks from today and shall also pay full back wages to respondent from the date of the award i.e. from 22.7.1999 till the actual date of his reinstatement within four weeks from today. Notice as to interim relief returnable on 03.05.2000".

5.1. Thus, it transpires that the impugned order was stayed on the condition as stated above. However, the Labour Court has committed error in granting reinstatement with full back wages *inasmuch* as the respondent workman was working on daily wage basis and his services were rendered as and when the work was available with them. Even otherwise the Labour Court has not given any reasons for grant of full back wages.

5.2. However, as stated by Mr. Pandya, the petitioner has accepted the direction qua reinstatement in service as

directed by this Court vide order dated 3rd April, 2000. Therefore, there is no dispute with regard to the direction of reinstatement in service. Now, so far as the direction with regard to back wages is concerned, the Labour Court has not given any cogent reasons for grant of full back wages, but has merely stated that the respondent workman had worked for 240 days in a year and before terminating the services of the respondent workman the petitioner has not followed the provisions of Section 25F of the Industrial Disputes Act. Thus, the view taken by the Labour Court is illegal and erroneous. Moreover, in view of the principle laid down by the Apex Court that no workmen is entitled to wages if he has not worked, the impugned order of the Labour Court qua the direction of back wages is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The order dated 22nd July, 1999 passed by the Labour Court, Palanpur, in Reference [L.C.P.] No. 101 of 1996, qua the direction with regard to reinstatement is confirmed and rest of the award is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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